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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/662,462 09/15/00 SMITH

T 2551-49

EXAMINER

HM12/0125

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GOLDBERG, J

ART UNIT

PAPER NUMBER

1655

DATE MAILED:

01/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/662,462

Applicant(s)

SMITH ET AL.

Examiner

Jeanine A Enewold Goldberg

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, 19-23, drawn to methods to detect and identify *Candida albicans* using SEQ ID NO: 1-3 and SEQ ID NO: 32-35, classified in class 435, subclass 6.
 - II. Claims 1-4, 6, 19-23, drawn to methods to detect and identify *Candida parapsilosis* using SEQ ID NO: 4-5, classified in class 435, subclass 6.
 - III. Claims 1-4, 7, 19-23, drawn to methods to detect and identify *Candida tropicalis* using SEQ ID NO: 6 and SEQ ID NO: 36, classified in class 435, subclass 6.
 - IV. Claims 1-4, 8, 19-23, drawn to methods to detect and identify *Candida kefyr* using SEQ ID NO: 7-8, classified in class 435, subclass 6.
 - V. Claims 1-4, 9, 19-23, drawn to methods to detect and identify *Candida krusei* using SEQ ID NO: 9 and SEQ ID NO: 37, classified in class 435, subclass 6.
 - VI. Claims 1-4, 10-, 19-23, drawn to methods to detect and identify *Candida glabrata* using SEQ ID NO: 10, classified in class 435, subclass 6.
 - VII. Claims 1-4, 11, 19-23, drawn to methods to detect and identify *Candida dubliniensis* using SEQ ID NO: 11-13 and SEQ ID NO: 38, classified in class 435, subclass 6.
 - VIII. Claims 1-3, 12-13, 19-23, drawn to methods to detect and identify *Aspergillus flavus* using SEQ ID NO: 18-20 and 42, classified in class 435, subclass 6.

- IX. Claims 1-3, 12, 14, 19-23, drawn to methods to detect and identify *Aspergillus versicolor* using SEQ ID NO: 21, 43, classified in class 435, subclass 6.
- X. Claims 1-3, 12, 15, 19-23, drawn to methods to detect and identify *Aspergillus nidulans* using SEQ ID NO: 22-25, classified in class 435, subclass 6.
- XI. Claims 26-27, 40-41, drawn to methods to detect and identify *Aspergillus fumigatus* using SEQ ID NO: 26-27, 40-41, classified in class 435, subclass 6.
- XII. Claims 1-3, 17, 19-23, drawn to methods to detect and identify *Cryptococcus neoformans* using SEQ ID NO: 14-17, classified in class 435, subclass 6.
- XIII. Claims 1-3, 18-23, drawn to methods to detect and identify *Pneumocystis carinii* using SEQ ID NO: 28-32, classified in class 435, subclass 6.

2. It is noted that numerous claims appear in more than one group. The claims which appear in multiple groups will be examined to the extent of the species elected. For example Claim 1 would be examiner in Group XIII to the extent that it applies to *Pneumocystis carinii*.

3. The inventions are distinct, each from the other because of the following reasons:

The inventions of Group I-XIII are patentably distinct methods because they each have different objectives, different uses, different reagents and different method steps. The method of Group I is for methods to detect and identify *Candida albicans* using SEQ ID NO: 1-3 and SEQ ID NO: 22-35. The method of Group II is to detect and identify *Candida parapsilosis* using SEQ ID NO: 4-5. The method of Group III is for methods to detect and identify *Candida tropicalis* using SEQ ID NO: 6 and SEQ ID NO: 36. The methods of Group IV are methods to detect and identify *Candida kefyr* using SEQ ID NO: 7-8. The methods of

Group V are methods to detect and identify *Candida krusei* using SEQ ID NO: 9 and SEQ ID NO: 37. The methods of Group VI are methods to detect and identify *Candida glabrata* using SEQ ID NO: 10. The methods of Group VII are methods to detect and identify *Candida dubliniensis* using SEQ ID NO: 11-13 and SEQ ID NO: 38. The methods of Group VIII are methods to detect and identify *Aspergillus flavus* using SEQ ID NO: 18-20 and 42. The methods of Group IX are methods to detect and identify *Aspergillus versicolor* using SEQ ID NO: 21, 43. The methods of Group X are methods to detect and identify *Aspergillus nidulans* using SEQ ID NO: 22-25. The methods of Group XI are methods to detect and identify *Aspergillus fumigatus* using SEQ ID NO: 26-27, 40-41. The methods of Group XII are methods to detect and identify *Cryptococcus neoformans* using SEQ ID NO: 14-17. Finally, the methods of Group XIII are methods to detect and identify *Pneumocystis carinii* using SEQ ID NO: 28-32. All of these methods are directed to detecting different species using different probes. Therefore the methods are distinct over one another.

4. A telephone call was made to B.J. Sadoff on January 19, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made. The applicant requested the restriction in writing.


5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Jeanine Enewold Goldberg whose telephone number is (703) 306-5817. The examiner can normally be reached Monday-Thursday from 7:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (703) 308-1152. The fax number for this Group is (703) 305- 3014.

Any inquiry of a general nature should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Jeanine Enewold Goldberg
January 24, 2001 


W. Gary Jones
Supervisory Patent Examiner
Technology Center 1600